



## Juridical Analysis of MSME Trademark Holders Based on Law No. 20 of 2016 Concerning Brand Rights and Geographical Indications

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### ABSTRACT

The legal protection given to trademark certificate holders is that the trademark is valid for 10 years and the only registered trademark owner has the rights to the trademark and cannot be changed without the trademark owner's permission. Law enforcement provided by the Trademark and Geographical Indications Law is criminal and civil. There are other alternatives, namely through arbitration and alternative dispute resolution with the concept of a win-win solution.

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## **INTRODUCTION**

Brands are an important element in the retail market in Indonesia. With this brand, consumers have the right to choose or buy products based on their judgment. Manufacturers need to create products with unique characteristics that can attract the attention of consumers. Based on international agreements, trademarks are a type of intellectual property right that is given legal protection. This is regulated in Article 1 paragraph 2 Aspects of Intellectual Property Rights Related to Trade or Trade Related Aspects of Intellectual Property Rights (TRIPS). Apart from trademarks, these regulations also cover several categories of intellectual property rights. Trademarks are part of intellectual property rights that wish to be registered and must comply with the requirements and procedures regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications/MIG Law. The purpose of trademark registration is to ensure that the trademark owner has clear legal protection and is fully protected by the state. If a problem arises regarding a trademark, the trademark certificate obtained can be used as legally valid evidence if the trademark or copyright holder has a trademark certificate registered with the authorized agency.

A trademark is the exclusive right of the creator and arises automatically according to the declarative principle after the work has been created without restrictions by the provisions of laws and regulations and is implemented in concrete form. The creator and copyright holder are two different legal entities. Creators are individuals who, either individually or in groups, create original and personal works. Meanwhile, the copyright holder is the creator who owns the copyright, the party who legally obtains the rights from the creator or another party. The copyright owner obtains additional rights from the party who legally received those rights. The rights between creators and copyright holders are certainly different. Creators have moral and economic rights, and copyright holders have economic rights to their work. Trademark owners must register their marks by applicable legal requirements. This is to ensure that the brand owner has legal guarantees and protection for his brand. The MIG Law explains the requirements and procedures for applying for trademark registration. Once trademark registration is complete, the trademark owner is recognized as the legal trademark owner<sup>8</sup>.

## **LITERATURE REVIEW**

The trademark owner then receives a trademark certificate from the Trademark Registry. Brand owners have rights and obligations regarding brand ownership. These rights and obligations arise when the trademark owner registers a trademark. These rights and obligations also benefit brand owners and consumers. Competition is very important to generate profits and gain a good reputation with consumers in the retail business. In some cases, this kind of competition can also be exploited by irresponsible parties, for example in fraudulent competitions known as passing off. Spoofing is an act that involves copying or imitating a registered trademark and may cause harm to the trademark owner. The Paris Convention defines misrepresentation as unfair

competition or fraud. In this case, it is stated that all countries participating in the Paris Convention have the right to protect competition and fraud.

## **METHODOLOGY**

The type of research that the author uses in this research is normative juridical. Normative juridical research is research that focuses on examining the application of rules or norms in positive law.

## **RESULT AND DISCUSSION**

Legal protection is an important thing in life. No one in society can protect their rights and the lack of legal protection will become a new problem. According to Satipto Rahardjo, legal protection is the protection of human rights that are violated by other people, and this protection is provided so that people can enjoy all the rights recognized by law.

Phillips M. Hudgeon said that legal protection is a means of protection by assisting legal subjects through various existing legal instruments. All communities acting as legal entities have the right to receive legal protection from the state. This legal protection is provided to the community without distinction of race, ethnicity, religion or culture. It cannot be denied that the state truly protects the rights and responsibilities of its citizens by providing adequate legal protection and responding to the needs and protection of each individual. The state provides legal protection to protect the public from abuse by law enforcers. Preventive legal protection is state legal protection that aims to prevent legal violations. This applies to legal regulations.

In this case, legal subjects are given leeway to express their opinions before the government issues legal regulations. SM Oppressive Legal Protection is the ultimate form of legal protection. This protection applies in dispute resolution and violations are subject to sanctions in the form of fines, imprisonment and additional penalties. Laws that cover the interests of a society can help realize and protect those interests.

The legal protection provided must be equal and must not contain elements that discriminate between communities. The law provides that all persons are entitled to fair and equal protection under the law. Check not only whether the conditions for obtaining legal protection are met, but also whether the conditions stated for obtaining protection for the incident that happened to you are fulfilled, based on the facts that occurred. The 1945 Constitution of the Republic of Indonesia states that everyone without exception has the right to protection.

According to Rahmadi Usman, Intellectual Property Rights or IPR is the right to possess human intellectual abilities in the fields of science and technology. IPR can also be interpreted as exclusive rights owned by the rights holder. However, if someone else wants to use these rights for something, it is important to obtain a license from the rights holder. The development of theory in the field of intellectual property rights has been adapted to the need to solve

related problems. Intellectual property theory can also be used in court and in resolving legal disputes in international trade.

The following is the rationale for IPR:

- a. Reward Theory This theory is a form of appreciation and recognition given to creators/inventors for the AI they create.
- b. Incentive Theory This theory is related to reward theory. Incentives need to be created to increase motivation for other research activities.
- c. Risk Theory This theory states that AI is an artifact that can pose a risk of imitation. Inventors/creators of intellectual property need the intellectual property they create to be protected and respected.
- d. Economic Growth Stimulation Theory This theory can stimulate creativity and contribute to economic and technological growth.

If a country's intellectual property rights are well protected, that country's economic and technological growth will also develop smoothly. The KBBI target is determined to be the perpetrator. The perpetrators referred to here are humans, social creatures, who deliberately carry out legal acts to enforce the rights and obligations determined by law. As we all know, in the field of intellectual property rights, creators are classified as legal entities. A creator is an individual or group who produces works or creations that have unique characteristics.

IPR is characterized by the existence of a Certain Period. IPR sets a certain period relating to an invention or invention. If the protection period for a copyrighted work has expired, the work can be extended again or become public property. Every work or creation created is protected for a certain period to prevent third parties from arbitrarily using the work or creation without permission from the holder of the rights to the work or creation. SM This is exclusive and absolute. Rights holders can defend these rights against anyone. If a dispute occurs, the rights owner can sue for infringement by another party who is not responsible for using the mark without permission from the rights owner. Because intellectual property rights are part of civil law, namely property rights, intellectual property rights also have an absolute nature that only applies to the ownership of an object. IPR also contains important principles to protect employee results from irresponsible parties. The following principles apply to IPR:

- a. Principle of Justice This principle states that individuals or groups of creators who create creation and produce the results of their intellectual abilities have the right to receive fair compensation. Rewards can be material or represent recognition of work, as well as appropriate protection.
- b. Economic Principles This principle explains that intellectual property rights are rights resulting from creative intellectual abilities that are useful and useful for human life. The property rights of the legal owner are clear because of the economic nature of humans who are needed to earn a living.

- c. The Principle of Culture This principle explains that the works created by humans are aimed at fulfilling their living needs. The development of universal science has enormous meaning for life, civilization and the dignity of all mankind.
- d. Social Principles This principle explains that the law regulates human life with other people.

All rights granted by law to individuals or groups are for the benefit of society as a whole. Every regulation must have a purpose, including intellectual property rights. IPR also aims to provide benefits to the owners of the rights to their creations. IPR aims to celebrate creative human intelligence and create economic value to sustain life. The following are some of the objectives of IPR:

- a. Can provide legal clarity between assets and investors, creators, etc. who use and misuse them for other positive purposes. SM Awarded for successful efforts to produce works of art.
- b. Distribution of copyrighted or creative works by making them available to the public.
- c. Promote recognition of efforts to transfer information through intellectual property and create technology through patents.
- d. Protection against copying of intellectual works by irresponsible parties.

Articles of the Civil Code explain that ownership is the right to freely use an object and do anything with it as long as it does not violate the law. IPR also provides legal certainty to the owner of the work. Therefore, it can bring benefits from an economic, social and cultural perspective. Here are some of the benefits of IPR that you need to know.

- a. Encourage developers to improve technological infrastructure to develop technology even faster.
- b. SM Provides legal protection to create better conditions for the growth and development of the desire for creativity and discovery in the fields of science, art and literature.
- c. Providing legal protection as proof of recognition of human intellectual work, attracting foreign investors, and facilitating trade at the international level.

A brand is a sign that an item is traded. The brand is an important factor in determining whether a product purchased by consumers is worthy or not. Brands can also be a differentiator for other products. Brands can also tempt consumers to buy the products being sold, especially since the brand already has a good value or reputation in the eyes of consumers. The definition of a brand is based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications or Article 1(1) of the MIG Law. A trademark is a sign that appears in two or three dimensions, such as an image or logo, in the form of sound, a hologram, or a combination of both. This element aims to differentiate goods and/or services produced in trade by individuals or legal entities.

This definition is by Article 15 of the TRIP Agreement which states that a trademark is a sign or combination of signs that differentiates the goods and/or services of one entity from those of other entities and must be declared as a trademark. In Indonesia, many manufacturers sell products that imitate part or all of the officially registered marks. These manufacturers also try hard to sell their products at prices much lower than the original market price. Of course, this is very detrimental to the brand owner. There is no direct benefit to the brand owner.

There are several causes of brand infringement in Indonesia.

- a. Intellectual property protection laws in Indonesia are still weak, and society generally targets those who prefer to buy low-quality products at low prices.
- b. SM Supervision is weak and implementation is still not clean.
- c. People's views on branded products but at low prices.
- d. People's purchasing power is low.
- e. Lack of attention to product quality.
- f. Awareness of trademark infringement is low.
- g. Due to economic conditions, people prefer to buy fake products because they are cheaper.

Apart from the above, there are other causes such as passing tests and unhealthy competition. What is called "passing off" or menu brand loss is an act of unfair competition. The result of misrepresentation is that the trademark owner who registered the trademark in good faith can suffer losses from the party who registered the trademark solely for profit. Indonesian Trademark Regulations began with Law Number 21 of 1961 concerning Company Marks and Trademarks, then changed to Law Number 15 of 2001 concerning Marks, and again to Law Number 20 of 2016 concerning Trademarks and Geographical Indications. State legal protection for brand owners not only protects their rights to the brand but also protects consumers who want transaction security when purchasing products with registered brands. Trademark owners in good faith may enjoy legal protection even if they have received a written trademark certificate proving ownership of their registered trademark. However, a brand can also be removed or eliminated if it is proven that the owner has bad faith in the brand. A trademark certificate is a non-licensable document that certifies ownership of intellectual property rights. Although it is not mandatory, economic actors need to protect their ownership rights over certain branded goods and services. This trademark certificate is issued by the Minister because it is a trademark registered by DJKI. If the issued trademark certificate is not immediately taken back by the trademark owner or his official representative within 18 months from the date of issuance of the certificate, the registered trademark will be considered canceled.

In the initial part, it was explained that there are two types of legal protection, namely preventive protection and repressive protection. The current legal protection in the MIG Law is preventive legal protection. Preventive legal protection is state legal protection that aims to prevent legal violations.

Preventive legal protection is carried out by registering your brand with DJKI to obtain legal protection and rights to your brand. Trademark registration is not mandatory for trademark owners. However, there is no legal protection that can protect a brand when a brand dispute arises, such as when one party is not responsible for the use of the brand. By registering a brand first, the brand owner will get a brand certificate which provides a basis for preventing irresponsible parties from using the same brand on similar products. A trademark is valid for 10 years from the date of receipt and can be renewed for the same period by the trademark owner or his authorized representative. This extension process is carried out 6 months before the expiration date, namely 6 months before the expiration date, and 6 months after the expiration date (including payment of fines). If a mark is registered with the DJKI, the owner of the registered mark is entitled to criminal and civil law protection. All criminal acts regulated in the MIG Law constitute legal protection for the ownership and use rights of trademarks and geographical indications of owners and rights holders.

## **CONCLUSIONS AND RECOMMENDATIONS**

Legal protection is ensuring the protection of human rights that are violated by other people through legal assistance. There are two forms of legal protection, namely preventive protection and repressive protection. The preventive legal protection provided by the MIG Law to brand owners is to register their brand with DJKI and receive legal protection for 10 years (can be extended). Registered and licensed trademark owners Trademarks may not be changed without the permission of the trademark owner.

## **FURTHER RESEARCH**

This research still has limitations so further research needs to be done on this topic "Juridical Analysis of MSME Trademark Holders Based on Law No. 20 of 2016 Concerning Brand Rights and Geographical Indications".

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